IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
LETTERS PATENT APPEAL NO.79 OF 2000
IN
FIRST APPEAL NO.1095 OF 1991
IN
S.C. SUIT NO.7124 OF 1987

Nirmaladevi Vijaynarayan Dwivedi,
Indian Inhabitant, residing at
Flat No.37, 1st Floor, Satya-
vijay Shopping Centre, Building
No.4, B.P. Road, Bhayander (East),
Thane District. .... Appellant

- Versus -

1. Kalika Ramnihut Pandey of
Mumbai, Indian Inhabitant,
residing at Daulat Flour
Mill, Jain Mandir Road
No.8, Borivali (East),
Mumbai-400 006.

2. Urmiladevi Pramodkumar
Dubey, of Barhalganj,
Indian Inhabitant, residing
at Post and Village
Mahuliapoyl, Post Office
Sakulpure, Head Post
Office, Barhalganj,
Dist: Gorakpur (U.P.). .... Respondents

Smt. V.S. Deshpande for the Appellant.

Shri Naveen Parekh i/b Ms Hetal Patel
for the Respondent Nos.1 and 2.

CORAM: R.M.S. KHANDEPARKAR &
Mrs. ROSHAN DALVI, JJ.

DATED: MARCH 09, 2006

ORAL JUDGMENT (Per R.M.S. Khandeparkar, J.):

1. Heard. Perused the records. This is an appeal against the judgment dated 6-10-1999 passed by the

learned single Judge in First Appeal No.1095 of 1991. By the impugned judgment, the learned single Judge has set aside the judgment and decree passed by the trial Court on 30-4-1991 in S.C. Suit No.7124 of 1987. By the said judgment and decree, the trial Court had decreed the suit filed by the appellant and had directed the respondent No.1, who was the defendant No.1 in the said suit, to pay to the appellant a sum of Rs.38,501.70 ps. together with interest of Rs.8,501.70 ps., at the rate of 12% per annum from the date of the filing of the suit till the date of the payment and further to pay costs.

2. Few facts relevant for the decision in the matter are that, one Ambika Krishnanand Pandey, who was the husband of the plaintiff No.1, expired on 4-8-1985 at Mumbai, leaving behind him the appellant and the defendant No.2 in the suit as his legal representatives. Ambika was employed in Kamala Mills at Lower Parel, Mumbai and had also acquired premises at Kurla, Mumbai, and also had started a business in the name and style of Ambika Flour Mill some time in the year 1967. He had also acquired several properties at different locations in Mumbai wherein the business of flour mill was being carried on in different names by his nephews. The respondent No.1 who was employed in the BEST as a conductor had been helping said Ambika and the other

members in the family for the purpose of attending various offices for obtaining licences, etc. for the said business and was also maintaining receipts from the said business. In relation to the business carried out by Ambika as well as the income earned by all the family members, there was a joint family account in the name of Ambika and the defendant No.1. The said account was opened in the year 1973 in the Central Bank of India at Lower Parel being Account No.9054. Ambika retired from service in December, 1983 and consequent to settlement of the account regarding his service dues, he received two cheques, one dated 25-4-1984 for Rs.14,514.40 ps. towards the gratuity and another dated 30-5-1984 for Rs.23,983.30 ps. towards the provident fund. Both cheques taken together were for an amount of Rs.38,501.70 ps.. The said cheques were deposited on 26-7-1984 in a newly opened joint account bearing No.4875 in the State Bank of India, BEST Bus Depot Branch at Kurla. An amount of Rs.8,000/- was withdrawn from the said account on 7-11-1984 and further and amount of Rs.30,000/- on 9-11-1984 and both these withdrawals were by the defendant No.1. After November, 1984 Ambika proceeded to his native place. However, as he fell ill and suffered a paralytic attack in January, 1985, he was brought to Mumbai and stayed with the defendant No.1 along with his wife, till his death, which occurred on 4-8-1985. Meanwhile, Ambika was

hospitalised in the month of April, 1985. After the death of Ambika, his widow and the appellant filed the present suit joining the respondent No.2 as the defendant No.2. As already stated above, the suit was decreed by the decree dated 30-4-1991. Being aggrieved by the said decree, the respondent No.1 filed the First Appeal No.1095 of 1991, which came to be allowed by the impugned judgment. During the pendency of the appeal, the widow of Ambika expired and the appeal was proceeded against the appellant and the respondent No.2 as the sole surviving heir of the widow of Ambika.

3. The trial Court, by its judgment, held that the amount of Rs.38,501.70 ps., which corresponds to the total amount received by Ambika towards his gratuity and the provident fund claims on his retirement, was credited in the newly opened joint account by the respondent No.1 without the knowledge and consent of Ambika and further that the amount of Rs.8,600/- and the amount of Rs.30,000/- were withdrawn by the respondent No.1 without the knowledge and consent of Ambika and that the respondent No.1 had failed to establish that there was understanding between him and Ambika that after the death of Ambika, the balance amount lying in the joint account should go to the respondent No.1 who could spend the same at his discretion and that therefore the respondent No.1 is liable to pay to the

appellant a sum of Rs.38,501.70 ps. along with interest. The learned single Judge, while allowing the appeal, set aside those findings and held that the evidence on record establishes to the contrary and therefore the appellant is not entitled to claim the said amount and on the contrary an amount of Rs.30,000/- therefrom was allowed to be appropriated by the respondent No.1 for himself with the consent of Ambika, and further an amount of Rs.8,600/- was withdrawn by the respondent No.1 at the instance of Ambika for being given to Rampher. Hence, the present appeal.

4. The learned Advocate appearing for the appellant, while assailing the impugned judgment, submitted that the evidence on record clearly discloses that inspite of there being a joint family account in the name of Ambika and the respondent No.1 in the Central Bank of India, the respondent No.1 fraudulently opened a separate joint account in relation to the two cheques for Rs.38,501.70 ps. and that too, without the knowledge and consent of the deceased Ambika and further withdrew the amount of Rs.8,600/- and Rs.30,000/- therefrom, without the consent and knowledge of Ambika, with the intention to exclude the appellant and other heirs of Ambika from enjoying the benefit of the said amounts. Even assuming that the new account in the BEST Bus Depot Branch at Kurla was opened with the consent of Ambika, once it is

clear that it was a joint account, the amount being belonging to Ambika, the respondent No.1 was holding the amount in trust for Ambika and on his death, for his legal heirs and therefore was not entitled to appropriate any amount therefrom for himself to the exclusion of the legal heirs of Ambika. According to the learned Advocate, the respondent No.1 has utterly failed to establish that he was duly authorised or allowed to withdraw the said amounts and to appropriate the same for himself and he had failed to adduce any evidence regarding consent or knowledge about such withdrawal and appropriation of the amount by the respondent No.1 to himself. Reliance is sought to be placed in the decision of the Apex Court in the matter of **Indranarayan v. Roop Narayan and another,** reported in AIR 1971 SC 1962, and also in the decisions of different High Courts in **Dalavai Nagarajamma v. State Bank of India, Cuttapah and others,** reported in AIR 1962 A.P. 260, **Padmanabhan Bhavani and others v. Govindan Bhargavi and another,** reported in AIR 1975 Kerala 83 and **Krushanadas Nagindas Bhate v. Bhagwandas Ranchhoddas and others,** reported in AIR 1976 Bombay 153.

5. On the other hand, the learned Advocate appearing for the respondents submitted that the trial Court had totally misread the evidence while decreeing the suit whereas the learned single Judge, on proper analysis of

the evidence, has held that the appellant had failed to establish her case. He has further submitted that though fraud by the respondent No.1 in relation to the amount of Rs.38,600/- was alleged in the plaint, not only that the appellant had failed to lead any evidence in support thereto but the evidence placed on record by the appellant herself reveals that there was absolutely no fraud played by the respondent No.1 in relation to the said amount. He has further submitted that the respondent No.1 had been helping Ambika and the other family members in their business, particularly in relation to the bank transactions and in obtaining licences from various offices, as also that Ambika was looked after by him and even his medical treatment expenditure were made by him during his old age. He further submitted that the respondent No.1 had even brought Ambika to Mumbai when the latter had suffered paralytic attack while he had gone to his native place. Drawing our attention to the various statements by PW-1 Gomti as well as by the widow of Ambika, he submitted that the said testimonies apparently disclose that the opening of the account at the BEST Bus Depot Branch at Kurla, different from the account already in existence in the Central Bank of India, has been clearly established to be with the consent and at the instance of Ambika as also the withdrawal of the amount of Rs.8,600/- as well as Rs.30,000/- being with the consent

and knowledge of Ambika and that the amount of Rs.30,000/- was essentially kept separately to be given to the respondent No.1 and was accordingly given. He further submitted that the evidence also establishes that the amount of Rs.8,600/- was given to Rampher for the gauna ceremony of his daughter Gayatri. Besides, during the life time of Ambika, there was separation of the assets of the family amongst the family members but the respondent No.1 had not received any share in such family assets. He has further submitted that the decisions sought to be relied upon are essentially in relation to the principle of intended advancement which is not applicable in India, apart from the fact that the applicability of that principle could arise only in relation to the amount found to the credit of the account of the person at the time of his death and not in relation to the amount which is disposed of during the life time of such person and that too with his knowledge and consent.

6. Upon perusal of the records and on hearing the learned Advocates for the parties, only point which arises for consideration is, whether the respondent No.1 had fraudulently opened joint account in his name and that of Ambika for depositing the two cheques, totalling to an amount of Rs.38,501.70 ps., and thereafter in breach of trust and fraudulently and by deceiving Ambika

had transferred an amount of Rs.38,600/- from the said account, either to his individual account or utilised the same for his individual benefit to the exclusion of the legal heirs of Ambika.

7. As rightly submitted by the learned Advocate for the respondents, the appellant-plaintiff had approached the Court with a specific plea that the respondent No.1 had fraudulently opened an account in joint name i.e. in his name as well as in the name of the deceased Ambika in the State Bank of India, BEST Bus Depot Branch at Kurla solely with the intention of converting the said amount to his own benefit to the exclusion of the deceased Ambika and further in deceitful manner had withdrawn the said amounts and transferred the same to the personal fixed deposit account in the same bank in the name of the respondent No.1. This was the specific plea based on which the appellant and the widow of Ambika had approached the Court, praying for decree for an amount of Rs.38,501.70 ps. along with interest thereon against the respondent No.1. As against this, the defence of the respondent No.1 was that, the joint account in the State Bank of India, BEST Bus Depot Branch at Kurla was opened at the instance and under the instructions and with the knowledge of Ambika as the deceased Ambika desired to allow the said amount to be utilised by the respondent No.1 at his discretion. It

was his further defence that an amount of Rs.8,600/- out of the said amount of rupees thirty eight thousand and odd was withdrawn at the instance of Ambika, to be handed over to Rampher for the gauna ceremony his daughter Gayatri and accordingly the said amount was withdrawn in November, 1984 and was paid to Rampher. Out of the balance amount, Rs.30,000/- was withdrawn with the consent and knowledge of Ambika and transferred to the personal fixed deposit account of the respondent No.1 in the very bank. In the back ground of these pleadings, though it is sought to be contended on behalf of the respondents that the burden was essentially upon the appellant to establish the alleged fraud by the respondent No.1, undisputedly, the trial Court had framed issue requiring the respondent No.1 to establish that the act of opening of the joint account at the BEST Bus Depot Branch at Kurla and the withdrawal of the said amounts therefrom were with the consent of the deceased Ambika and at no point of time, either during the proceedings before the trial Court or in the course of the appeal before the learned single Judge, any grievance was made by the respondents in that regard. It is too late for the respondents to make any grievance regarding such framing of issues or casting of burden upon the respondents in that regard. Nevertheless, certainly it will be necessary for the appellant to prove that the evidence placed on record sufficiently

establish the allegation of fraud by the respondent No.1 in relation to the opening of the account as well as withdrawal of the amounts therefrom, more so in view of the specific finding by the learned single Judge about the failure in that regard by the appellant.

8. As far as the issue relating to the act of opening of the joint account at the BEST Bus Depot Branch at Kurla is concerned, the testimony of Gomti (PW-1) clearly discloses that the deceased Ambika himself had handed over the cheques for an amount of Rs.38,000/- to the respondent No.1 asking him to open a separate account in respect of the said two cheques. It is not the case of the appellant that Ambika had no knowledge about already existing joint account in the Central Bank of India. On the contrary, it is the case of the appellant herself that all-throughout there was a joint account in relation to the family income and all the members of the family were depositing their income in the said account and that account was operated by the respondent No.1, along with Ambika, and at the same time yet it was to the knowledge of the appellant that the new account was directed to be opened by Ambika himself and it was not without his knowledge or without his consent. Being so, the allegation about fraud by the respondent No.1 in relation to opening of new joint account stands absolutely disproved by the witness of

the appellant herself, apart from the testimony of the respondent No.1. The statement of Gomti (PW-1) about direction having been given by Ambika for opening a new account in relation to the said two cheques is in consonance with the case pleaded by the respondent No.1 and his testimony in respect of opening of the new joint account at the BEST Bus Depot Branch at Kurla. No doubt, the testimony of Gomti does not specifically disclose that separate account was directed to be a joint account but at the same time the testimony of Gomti also does not disclose that there was specific instruction for individual account to be opened in the name of Ambika. Considering the undisputed fact that the respondent No.1 was helping Ambika and the other family members in their business in obtaining licences and more particularly in operating the bank account and that was also a joint account in the name of the respondent No.1 and Ambika, merely because the new account at the BEST Bus Depot Branch at Kurla was opened as a joint account in the name of Ambika and the respondent No.1, no presumption of any sort of fraud can be drawn nor an inference can be drawn that there was any mal-intention on the part of the respondent No.1 to deceive either Ambika or his heirs on that count. Once the practice of having joint account operated by the respondent No.1 is clearly established and further that it was at the instance of Ambika himself that a new

account in respect of two cheques was opened by the respondent No.1, it cannot be said that the respondent No.1 had acted in any unusual manner or with any mal-intention in respect of the said two cheques.

9. The learned single Judge after going through the entire evidence on record, has clearly observed that the circumstances brought on record led to a definite conclusion that the new account was got opened by deceased Ambika jointly with the respondent No.1 and has specifically referred to the fact that though the two cheques were received by Ambika, he did not deposit the same in the account which was already existing in the Central Bank of India, but retained the same for two months, awaiting the arrival of the respondent No.1 who had then gone to his native place. Further, after opening of the said account, Ambika survived for a period of a year or so and at no point of time he raised any doubt or questioned the respondent No.1 about the amount deposited in the said account. The widow of Ambika or the appellant never claimed any information or intimation as regards the new account by Ambika to her when the latter had been to his native place. Obviously, these facts disclose that the intention of Ambika to exclude the amount of Rs.38,501.70 ps. from being brought in the family income or being made available for the benefit of all the members of the

family, and it further discloses his intention to utilise the said amount to the exclusion of the family members and being kept separately for the benefit of the respondent No.1 and the daughter of Rampher. Being so, the finding arrived at by the learned single Judge is clearly borne out from the records, on the point of clear knowledge and consent of the opening of the new account in the joint name of the respondent No.1 and Ambika and, therefore, same does not warrant any interference in this appeal.

10. As regards the withdrawal of the amounts from the newly opened joint account, the learned single Judge with reference to amount of Rs.8,600/- has clearly held that, it has been the case of the respondent No.1 right from the beginning that he was not on good terms with Rampher. However, as per the instructions of Ambika, he had withdrawn an amount of Rs.8,600/- from the said newly opened joint account and such withdrawal by him was necessary as at the relevant time Ambika was not in a position to affix his signature on his own cheques as his hands used to shake. The finding also discloses that the said amount of Rs.8,600/- was paid to Rampher. While the trial Court has disbelieved the said claim of the respondent No.1 solely on the ground that Rampher was not examined as a witness, the learned single Judge has observed that, there was no occasion for the

respondent No.1 to examine Rampher in support of his contention in that regard as the respondent No.1 was not in good terms with Rampher while nothing prevented the appellant from examining Rampher. It is also to be noted that it is not the case of the appellant that at the time the amount of Rs.8,600/- was withdrawn and stated to have been given to Rampher, either Ambika was not keeping good health or was not in a position to know about the operation of the account or that at any point of time, inspite of being fully aware of delivery of cheques for Rs.38,501.70 ps. to the respondent No.1 for opening of the new account, Ambika had questioned the respondent No.1 about the withdrawal of amounts from the newly opened account. In the absence of any material on record being placed, that Ambika had any objection for such withdrawal or had objected to such withdrawal, mere statement of the appellant that the said amount was withdrawn by the respondent No.1 without the knowledge of Ambika, cannot be accepted as a gospel truth. Once it is not in dispute that the new account was opened on the specific instructions of Ambika and he had full knowledge about the said account and its operation, in case the appellant wanted to dispute the authority of the respondent No.1 to withdraw such amount from such a joint account, which occurred during the life time of Ambika and when Ambika was in full senses to know about the operation of such account, it was necessary for the

appellant to place on record cogent evidence to doubt the veracity of the claim of the respondent No.1 that the amount of Rs.8,600/- was withdrawn for being given to Rampher and was accordingly given to him. It is to be noted that Rampher was not a stranger to the family. He is the younger brother of Ambika.

11. The learned single Judge in that regard has also taken note of the fact that the trial Court had overlooked the admitted factual position that Ambika was the head of the family and almost till 1983 the family was joint and it had started disintegration thereafter and somewhere by the year 1984 the partition or separation had taken place. Rampher being the younger brother of Ambika, the learned single Judge has rightly observed that there was nothing unusual for Ambika to give an amount of Rs.8,600/- to his younger brother for the gauna ceremony of his younger brother's daughter Gayatri. It is pertinent to note that the appellant has nowhere disputed about such ceremony of the daughter of Rampher. In our considered opinion, the learned single Judge has rightly observed that the finding of the trial Court that it was necessary for the respondent No.1 to lead evidence to show that Rampher was not in a position to incur the necessary expenses of gauna of his daughter Gayatri or was required to prove the fact that there was a request made by Rampher for financial help from

Ambika, are absolute surmises.

12. As regards the withdrawal of Rs.30,000/- and the transfer thereof to the personal account of the respondent No.1, the learned single Judge has held that Ambika was ill in the month of January, 1984 at his native place and after some time he was brought to Mumbai and stayed with the respondent No.1. However, at no point of time Ambika ever demanded any amount from the account opened in the State Bank of India, BEST Bus Depot Branch at Kurla to meet his medical expenses. If at all the withdrawal of Rs.30,000/- and the transfer thereof to the personal fixed deposit account of the respondent No.1 was without the consent and knowledge of Ambika, certainly when Ambika was hospitalised, there would have been demand for the said amount or part thereof to meet his medical treatment expenses. However, the evidence nowhere discloses any such demand having been made by Ambika at any point of time. Added to this, it is also to be considered that undisputedly when the cheques collectively for Rs.38,501.70 ps. were brought by Ambika, Gomti (PW-1) was present, yet for two months Ambika retained those cheques with himself but did not hand over those cheques to Gomti for being deposited in the joint account in the Central Bank of India. It is also to be noted that at that time the respondent No.1 was at his native place. It is only

after the return of the respondent No.1 from his native place that Ambika handed over those cheques to the respondent No.1, in the presence of Gomti, with the specific instruction to open a separate account in respect of those cheques. It has been the consistent case of the respondent No.1 right from the beginning that such instructions were given with the sole intention that the amount under those cheques were required to be utilised by Ambika for the benefit of the respondent No.1 taking into consideration that the respondent No.1 had been helpful to Ambika and the family members in their business and for operation of the bank account. In fact, it is the case of the appellant herself in the plaint that the respondent No.1 had been helping Ambika and the family members in their business. A categorical statement in that regard is to be found in para 3 of the plaint which reads thus:

> "The Defendant No.1 who is employed in B.E.S.T. as Conductor, and been helping the said deceased Ambika K. Pandey and the other persons of the family having their respective flour mills as aforesaid for the purpose of attending the concerned Offices of the Bombay Municipal Corporation, B.E.S.T., Government of Maharashtra for the

> licences purposes, he used to keep the licences and the receipts for the payments with him."

Apparently therefore, the respondent No.1 had been helping all the family members of Ambika in their business and Ambika being the eldest person in the family undisputedly at the time of separation of the family assets, the respondent No.1 did not get any share in such distribution of the family assets, there is nothing surprising or unusual for Ambika to ensure certain amount for the benefit of the respondent No.1. Besides, as already observed above, the withdrawal of Rs.30,000/- had been much prior to the paralytic attack suffered by Ambika. In other words, the withdrawal was at the time when Ambika was in his full senses and was fully capable of knowing the transactions in relation to the joint account in the BEST Bus Depot Branch at Kurla. It is nobody’s case that during his life time and while he was in senses, Ambika had at any point of time objected to such withdrawal of amount by the respondent No.1 from the said joint account. Being so, the findings arrived at by the learned single Judge, that such withdrawals of Rs.8,600/- and Rs.30,000/- were with the full knowledge and consent of Ambika, cannot be found fault with. Indeed the findings to the contrary by the trial Court are rightly to be categorised as mere

surmises and are not borne out from the records, rather they are contrary to the records.

13. The learned Advocate for the respondents is justified in contending that even the appellant had knowledge about the fact that Ambika was fully aware of the opening as well as the transactions in the newly opened joint account by the respondent No.1. It was the case of the widow herself before the trial Court that there was a talk between herself and Ambika and Ambika had told the widow about certain funds being kept with the respondent No.1. At the same time, the testimony of Gayatri discloses that after deposit of the two cheques in the newly opened account, Ambika never discussed about the said account with the widow. This apparently discloses that while on the one hand Ambika had full knowledge about the opening as well as transactions in the newly opened account, he refused to divulge any information in that regard to the appellant as well as the widow. At the same time, Ambika did not raise any objection during his life time for appropriation of Rs.30,000/- by the respondent No.1 to himself by transferring the said amount to his personal fixed deposit account and the payment of Rs.8,600/- to Rampher. The testimonies of Gomti and the widow of Ambika therefore lend clear support to the case put forth by the respondent No.1 regarding the consent and

knowledge about the operation of the newly opened account at the BEST Bus Depot Branch at Kurla and hence the findings to the contrary by the trial Court were totally devoid of substance whereas the learned single Judge, on detail analysis of the evidence on record, has arrived at the correct finding in that regard.

14. As rightly submitted by the learned Advocate for the respondents, the theory of intended advancement can come into operation in relation to the amount standing to the credit of the account at the time of death of the person whose estate is to be distributed. If the amount is disbursed during the life time of the person with his consent and knowledge, the question of intended advancement in favour of any particular heir cannot arise. The decision of Privy Council which is referred to by the Division Bench of the Andhra Pradesh High Court in **Dalavai Nagarajamma's** case (supra) as well as the decision of the Apex Court in **Indranarayan's** case (supra) are very clear in that regard. The Apex Court therein has clearly held that:

> "There is no presumption of advancement in this country but yet if there had been satisfactory evidence to show that the transfers in question are genuine and further that Dr. Pandit intended

> that the amounts in question should go to the 1st defendant exclusively after his death, we would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted."

That was a case wherein one Dr. Sudarshan Pandit had expired, leaving behind him two sons and three daughters. The contest in the matter before the Apex Court was relating to two bank deposits, one for Rs.41,000/- and another for Rs.50,000/-. The contention of the son in whose favour the said amount was sought to be transferred immediately prior to the death of Dr. Pandit was that, the plaintiff in the suit had separated himself from the rest of the family as far back as in 1936 and therefore he was not entitled for any share in the suit properties left behind by Dr. Pandit, who had expired on 6-4-1949. His further plea was that deposits of Rs.41,000/- in the Bank of Indore and Rs.50,000/- in Binod Mills stood in the name of Dr. Pandit till about the third week of March, 1949 and the same were gifted to him. The amount of Rs.41,000/- in the Bank of Indore was gifted to him on 25-3-1949 whereas Rs.50,000/- in the Binod Mills was gifted on 30-3-1949. The trial Court had dismissed the suit of the plaintiff on the sole ground that the plaintiff had separated himself

from the father as far back as in 1936 whereas the defendant No.1, in whose favour the amounts were transferred on the claim of gift was joint with his father. It was also held that the plaintiff was separated from his father and therefore he had no right in the properties left behind by Dr. Pandit. The High Court, in appeal, substantially reversed the decree and came to the conclusion that there was no evidence to show that the plaintiff had separated himself from the family. It also came to the conclusion that Rs.91,000/- formed part of the joint family and therefore divisible. While dealing with the issue relating to the amount of Rs.91,000/-, claimed by one of the sons as having been gifted to him, the Apex Court after considering the evidence on record and particularly the letters on the strength of which the amount was sought to be transferred on the claim of gift were not proved and further that the medical evidence on record had established that the mental condition of Dr. Pandit was such that he was not in a position to affix his signature on the letters alleged to have been written and signed by Dr. Pandit on 30-3-1949. It was held that there was no satisfactory proof of the alleged gift of the said amount in favour of the son by Dr. Pandit. In the back ground of those facts and the said finding about no cogent evidence being produced about the gift, and further more that Dr. Pandit at the relevant time

was not in a position to transfer the amounts by affixing his signature with the full knowledge of the contents of what might have been written in the letters, it was held that there was no gift in favour of one of the sons and therefore the amount of Rs.91,000/- formed part of the family property. Being so, on facts the decision is totally distinguishable and is of no help to the appellant in the case in hand. It is a settled principle of law that a law laid down in a decision has to be understood with reference to the facts of the case and the point which arises for consideration in those facts of the case, coupled with the ruling given thereon. Being so, the above referred decision of the Apex Court is of no help to the appellant in the case in hand.

15. As regards the decision in **Dalavai Nagarajamma's** case, that was a case wherein claim was made to the amount standing in the joint account of the deceased and the surviving members of the family on the day of the death of the person. Obviously therefore, the decision is of no help to the appellant in the case in hand. Therein the finding of the District Judge on the point as to the claim amount clearly discloses that the fixed deposit was in the joint name of Ramaswami i.e. the deceased and the appellant before the High Court and the account was in the form of payable to either or survivor

but at the same time it was undisputed fact that the amount deposited belonged to the estate of the deceased Ramaswami.

16. The decision in **Padmanabhan Bhavani's** case (supra) was on the point that a deposit made by a Hindu of his money in the joint name of himself and his wife or himself and another person on the terms that it is payable to either or survivor does not, **on his death**, constitute a gift by him to her or to other person. Similarly, the decision of our High Court in **Krushanadas Nagindas Bhate's** case (supra) was in the facts of that case wherein the records placed before the Court did not disclose any material revealing acceptance of the gift though there was a letter by the donor acknowledging an oral gift. The Division Bench held that under Section 123 of the Transfer of Property Act, for the purpose of making gift of an immovable property, the transfer may be effected either by a registered signed instrument or by delivery. Though there was a document purported to be the instrument of transfer, it was in the nature of a letter acknowledging an oral gift and hence it was not required to be registered but it was impossible to consider the recital as sufficient to show that the donee had accepted the amount when in fact the amount was in the deposit in the joint account of the donee and the third person who could have operated for either of

them or by survivor and that therefore in the absence of acceptance of the gift, the amount continued to be in the bank and was always withdrawable by the third person under the rules of the bank. Apparently, the decision is in a totally different set of facts which has no applicability to the matter in hand.

17. For the reasons stated above, therefore, there is no case for interference in the impugned judgment and hence the appeal fails and is hereby dismissed, with no order as to costs.

(Mrs. Roshan Dalvi, J.) (R.M.S.Khandeparkar, J.)

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